IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 123 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJUBHAI HARGOVINDDAS SHAH

Versus

GHANSHYAMDAS KALIDAS SOLANKI

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Appearance:

MR DHARMENDRA PARIKH for Petitioner

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/01/2001

ORAL JUDGEMENT

1. By virtue of the revision under Section 115 of the Civil Procedure Code the Revisioner herein seeks to challenge the judgement and order passed in Miscellaneous Civil Appeal No. 261/2000 by the learned Assistant Judge, Vadodara on 20.01.2001.

2. The Revisioner is the plaintiff who had preferred Regular Civil Suit No. 135/2000 against the opponents herein in the Court of Civil Judge at Vadodara for declaration and injunction and for specific performance of a contract. The case of the plaintiff was that respondent no. 1 is the owner of the disputed property. Respondent no. 2 is the power of attorney holder and that an agreement to sell (Banakhath) was entered into between the Revisioner and the opponents no. 1 and 2 in respect of the suit property. It is further the case of the Revisioner that on the basis of that Banakhath, part consideration was paid and possession of the suit property was handed over to the Revisioner/ plaintiff. However, subsequently, fraudulently opponents no. 1 and 2 have sold the property of opponent no. 3 (original defendant no. 3). The plaintiff therefore preferred the suit and in that suit an application for interim injunction was tendered before the Trial Court alongwith the plaint, an application for appointment of Commissioner was made for drawing of panchnama. The Commissioner visited the place and prepared the panchnama. After considering the rival side contention the Trial Court found that the plaintiff / Revisioner is not able to indicate a prima-facie case of his being put in possession of the suit property. The panchnama drawn by the Court Commissioner indicated that the defendant no. 3 was in possession. The Court therefore refused to grant temporary injunction. Aggrieved by the said order the plaintiff preferred Miscellaneous Civil Appeal No. 261/2000 in the District Court at Vadodara. The learned Assistant Judge, Vadodara after considering the rival side contentions and material on record found that there were no merits in the appeal and therefore dismissed the same confirming the order of the Trial court. Aggrieved by the said judgement and order the present revision is preferred.

3. Mr.D.N. Parikh, learned advocate for the Revisioner submitted that the plaintiff has paid sizeable consideration for the property in question on the basis of the agreement to sell. He stated that the defendants have fraudulently entered into transaction subsequent to the agreement to sell. A fraud is played by surreptitiously entering into the premises and applying the locks by defendant no. 3. The document of sale executed in favour of defendant no. 3 is found to have been under valued and is called upon to pay an additional stamp duty. This aspects of law is not considered by the Trial Court. He submitted that this revision may be entertained and injunction in favour of the Revisioner

may be granted.

4. Mr.D.N. Parikh's contentions cannot be entertained. Having gone through the judgement and order of the Appellate Court, it is obvious that no jurisdictional error is committed which calls for any interference in exercise of Revisional jurisdiction.

5. Admittedly the suit is for specific performance. Admittedly before the suit was filed there is a sale deed executed in favour of opponent no. 3 by opponent nos. 1 and 2. It is duly registered, by virtue of which defendant no. 3 claims to be in possession. Say of defendant no. 3 is found to be supported by the panchnama drawn by Court Commissioner. It also appears that the sale deed was executed after issuing a public notice. No objection was raised by the Revisioner to such proposed transaction. Under the circumstances no injunction could have been granted. This Court finds no merit in this Revision Application and the same is therefore dismissed. No costs.

(A.L. DAVE,J.)

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